

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

REGINALD GIBSON,

Plaintiff,

vs.

CASTELLANOS, et al.,

Defendants.

1:21-cv-00794-GSA-PC

**ORDER FOR CLERK TO RANDOMLY
ASSIGN A UNITED STATES DISTRICT
JUDGE TO THIS CASE**

AND

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
BE DENIED AS PREMATURE
(ECF No. 9.)**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS**

I. BACKGROUND

Plaintiff, Reginald Gibson, is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on May 17, 2021. (ECF No. 1.) On March 7, 2022, Plaintiff filed a motion for summary judgment. (ECF No. 9.)

1 **II. PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

2 Plaintiff seeks summary judgment on the merits of his claims against Defendants.
3 However, Plaintiff’s motion is premature pursuant to Rule 56(d) of the Federal Rules of Civil
4 Procedure. Gordon v. Marquez, No. 118CV01223DADSABPC, 2019 WL 1017323, at *1 (E.D.
5 Cal. Mar. 4, 2019). Although Rule 56 allows a party to file a motion for summary judgment “at
6 any time,” the rule also allows the court, as is just, to deny the motion or order a continuance for
7 the opposing party to pursue discovery. Id. (citing Fed. R. Civ. P. 56).

8 Here, Defendants are entitled to an opportunity to pursue discovery before responding to
9 a summary judgment motion. In this instance the Complaint has not been served, none of the
10 Defendants have filed an answer, and no discovery order has been issued. Accordingly,
11 Plaintiff’s motion for summary judgment should be denied as premature. However, nothing
12 prevents Plaintiff from filing a future motion for summary judgment that incorporates all relevant
13 materials obtained after the period set for the completion of all discovery as contemplated by
14 Rule 56. Id. (citing see, e.g., Moore v. Hubbard, No. CIV S-06-2187 FCD EFB P, 2009 WL
15 688897, at *1 (E.D. Cal. Mar. 13, 2009) (recommending that pre-discovery motion for summary
16 judgment be denied as premature)).

17 **III. ORDER, RECOMMENDATION, AND CONCLUSION**

18 Accordingly, **IT IS HEREBY ORDERED** that the Clerk randomly assign a United
19 States District Judge to this case;

20 **AND**

21 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 22 1. Plaintiff’s motion for summary judgment, filed on May 17, 2021, be denied,
23 without prejudice, as premature; and
24 2. This case be referred back to the Magistrate Judge for further proceedings.

25 These findings and recommendations are submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
27 **(14) days** from the date of service of these findings and recommendations, Plaintiff may file
28 written objections with the court. Such a document should be captioned “Objections to

1 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
2 objections within the specified time may waive the right to appeal the order of the District Court.
3 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4
5 IT IS SO ORDERED.

6 Dated: April 19, 2022

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE